

ESTTA Tracking number: **ESTTA460013**

Filing date: **03/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 92053787 |
| Party | Defendant Metagenics, Inc. |
| Correspondence Address | DENNIS H CAVANAUGH D H CAVANAUGH ASSOCIATES 555 FIFTH AVENUE, 17TH FLOOR NEW YORK, NY 10017 UNITED STATES dhc@dhcavanaugh.net |
| Submission | Answer |
| Filer's Name | Dennis H. Cavanaugh |
| Filer's e-mail | dhc@dhcavanaugh.net |
| Signature | /Dennis H. Cavanaugh/ |
| Date | 03/05/2012 |
| Attachments | Metagenics adv James - Answer to Amended Petition.pdf (7 pages)(22808 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---------------------------------|---|----------------------------|
| Everett W. James aka Tad James, | X | |
| | : | |
| Petitioner, | : | Cancellation No.: 92053787 |
| v. | : | |
| Metagenics, Inc., | : | |
| Registrant, | : | |
| | X | |

ANSWER TO AMENDED PETITION AND AFFIRMATIVE DEFENSES

Registrant, Metagenics, Inc. ("Registrant"), by its attorneys, as and for its Answer to Petitioner's Amended Petition for Cancellation states as follows:

1. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the U.S. Patent and Trademark Office ("USPTO") show certain registrations to be in the name of Petitioner, which records speak for themselves.

2. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the USPTO show certain registrations to be in the name of Petitioner, which records speak for themselves.

3. This paragraph does not appear to require a response, however, Registrant denies same.

4. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the

USPTO show certain registrations to be in the name of Petitioner, which records speak for themselves.

5. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that the records of the USPTO show certain registrations to be in the name of Petitioner, which records speak for themselves.

6. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

7. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

8. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

9. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

10. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

11. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

12. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same.

13. Admitted.

14. Admitted.

15. Denied, except to admit that Exhibit A purports to be a copy of a record from the USPTO, which record speaks for itself.

16. Denied, except to admit that the so-called “Old Cal. Corp.” was “merged out” according to the Secretary of State of the State of California.

17. Admitted.

18. Denied.

19. Admitted.

20. Denied.

21. The Registration is a legal document that speaks for itself.

22. The Registration is a legal document that speaks for itself.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that there is an Exhibit D attached to the Amended Petition for Cancellation, which exhibit speaks for itself.

28. Registrant is without information as to the truth or falsity of the allegations contained in this paragraph, and accordingly, denies same, except to admit that there are Exhibits E, F and G attached to the Amended Petition for Cancellation, which exhibits speak for themselves.

29. Admitted.

30. Registrant denies that “First” is a concept that is *only* related to “Time,” and admits that there is an Exhibit H attached to the Petition for Cancellation, which exhibit speaks for itself.

31. Denied.

32. Admitted.

33. Registrant denies the allegations of this paragraph except to admit that the official record of Registration No. 2,818,514 at the USPTO speaks for itself with respect to the allegations of this paragraph.

34. Registrant denies the allegations of this paragraph except to admit that the official record of Registration No. 2,818,514 at the USPTO speaks for itself with respect to the allegations of this paragraph.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied, except to admit that the registrations referenced in this paragraph speak for themselves.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

37. Petitioner's claims fail to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

38. Petitioner's claims are barred by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

39. Petitioner's claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

40. Petitioner's claims are barred by the doctrine of estoppel, including equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

41. Petitioner's claims are barred by fraud.

SIXTH AFFIRMATIVE DEFENSE

42. Petitioner's claims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

43. Registrant reserves the right to amend its Answer to Amended Petition and Affirmative Defenses after further discovery and/or to add counterclaims.

WHEREFORE, Registrant demands judgment against Petitioner dismissing Petitioner's Amended Petition for Cancellation.

Respectfully submitted,

METAGENICS, INC.

/Dennis H. Cavanaugh/

Dated: March 5, 2012

By: _____

Dennis H. Cavanaugh
D H Cavanaugh Associates
555 Fifth Avenue, 17th Floor
New York, New York 10017
Tel: (212) 856-7210
Fax: (212) 856-7211
Email: dhc@dhcavanaugh.net

Attorneys for Registrant

CERTIFICATE OF SERVICE

DENNIS H. CAVANAUGH, declares that:

I am counsel for the Registrant in the captioned action, and that on the execution date which appears below, a true copy of the foregoing was served on Petitioner's counsel by causing the same to be sent via email to the following email addresses:

mhsia@cades.com
cmiwa@cades.com

2. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Dated: New York, New York
March 5, 2012

/Dennis H. Cavanaugh/
By _____
Dennis H. Cavanaugh